

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CYPRESS SCHOOL DISTRICT.

OAH Case No. 2016040579

ORDER DENYING WITHOUT  
PREJUDICE CYPRESS'S MOTION TO  
BIFURCATE

Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings on April 12, 2016, naming the Cypress School District.

On April 22, 2016, Cypress filed a motion to bifurcate the proceedings. Cypress contends that Student is not and has not been a resident within its boundaries during the time period covered by Student's complaint. Cypress moves to bifurcate the issue of Student's residency from the issues raised in Student's complaint. Cypress contends that Student's residency is a threshold issue that should be heard first as a determination that Student was not and is not a resident within Cypress's boundaries would result in dismissing the allegations Student has raised against Cypress.

On April 28, 2016, Student filed a response to Cypress motion in which he objected to the bifurcation.

APPLICABLE LAW

Although there is no special education law or regulation that addresses bifurcation of issues, OAH generally looks to civil cases and the California Administrative Procedure Act for guidance. Government Code section 11507.3 of the APA of states, in part:

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

Code of Civil Procedure section 598 contains a similar provision for civil trials:

The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the

close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue....

OAH also has the obligation to move cases to hearing expeditiously. A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless there is a 30-day statutory resolution period or an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

## DISCUSSION

In his complaint, Student contends that Cypress has failed to provide him with a free appropriate public education since April 8, 2014. In addition to disputing that it failed to offer Student a FAPE, Cypress contends that Student was not a resident within its boundaries, and that, therefore, it was not required to provide Student with a FAPE.

The appropriate time to raise a request to bifurcate a matter is at the prehearing conference. At that time, the assigned administrative law judge can consider the request and if the request is granted, discuss with the parties any scheduling issues. (See, *Student v. Fortuna Unified School District, Kelseyville Unified School District and Konocti Unified School District* ((August 25, 2014) Cal. Off. Admin. Hrngs. 2014080602).)

Accordingly, Cypress's motion to bifurcate is denied without prejudice to raising the issue at the prehearing conference.

IT IS SO ORDERED.

DATE: April 29, 2016

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings